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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 FELICIA CROSS,

12 Plaintiff,

13 v.

14 SEATTLE CANCER CARE ALLIANCE, a
15 Washington nonprofit corporation; FRED
16 HUTCHINSON CANCER RESEARCH
CENTER, a Washington nonprofit corporation,

17 Defendants.
18

No. 2:16-CV-00631

PLAINTIFF'S 2nd AMENDED
COMPLAINT

(JURY TRIAL DEMANDED)

19 **COMPLAINT**

20 1. Plaintiff, *Felicia Cross*, brings these causes of action against Defendants, *Seattle*
21 *Cancer Care Alliance and Fred Hutchinson Cancer Research Center*, under 31 U.S.C. 3729,
22 et seq., the False Claims Act, for unlawfully and intentionally retaliating against *Cross*, in
23 violation of the anti-retaliation provisions, of the False Claims Act, 31 U.S.C. 3730(h). *Cross*
24 engaged in investigation and information gathering, about possible Medicare fraud (a protected
25 activity under the FCA), and the Defendants, with knowledge of such conduct, retaliated, by
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1 wrongfully terminating **Cross**' employment, because she engaged in such activity.

2 INTRODUCTION

3 2. This is a civil action to recover damages, in excess of **\$75,000**, plus all applicable civil
4 penalties and other relief from Defendant, for unlawfully and intentionally retaliating against
5 **Cross**, in violation of the anti-retaliation provisions of the False Claims Act, 31U.S.C.3730(h).

6 JURISDICTION AND VENUE

7 3. This Court has jurisdiction, under the Federal False Claims Act, 31U.S.C. 3732.

8 4. The claims in the proposed action arise from Defendants' participation in the Medicare
9 Insurance Program, in **Seattle**, Washington, and therefore under the applicable statutes and
10 court rules, venue is proper in the Western District of Washington, at **Seattle**.

11 PARTIES

12 5. **Felicia Cross** is a Plaintiff, under 31U.S.C. 3730(b)(1).

13 6. Defendant, **Seattle Cancer Care Alliance ("SCCA")** is a Washington nonprofit
14 corporation, with its principal offices located in **Seattle**, Washington; and Defendant, **Fred**
15 **Hutchinson Cancer Research Center ("Fred Hutch")** is a Washington nonprofit
16 corporation, with its principal offices located in **Seattle**, Washington.

17 7. Whenever reference is made, in this Complaint, to any representation, act, or
18 transaction of the Defendants herein, such allegation shall be deemed to mean that the
19 principals, officers, directors, employees, agents, or representatives, while actively engaged in
20 the course and scope of their employment, did authorize such acts or transactions on behalf of
21 the Defendant. The Defendants are referred to hereinafter as "**SCCA**" and "**Fred Hutch**."

22 FACTS

23 8. **Felicia Cross**, worked for 13 ½ years at the University of Washington Medical Center,

1 as the Lead Pharmacy Billing Specialist. She was recruited to SCCA, by UWMC senior
2 management, on December 1, 2000, with full seniority, to lead the pharmacy-billing
3 department, at the grand opening of SCCA. On October 1, 2007, she was promoted to SCCA
4 Integrity/Compliance, to implement a newly created Clinical Research Billing Compliance
5 Analyst position. She has worked in the field for over 33 years, with 26 of those years working
6 for the SCCA, based on seniority. SCCA implemented EPIC Medical Electronic Medical
7 Records and billing system, on August 1, 2010.

8
9 9. Cross started working at the newly opened SCCA, one month before the grand opening.
10 No one had worked in either the Pharmacy or Research Billing positions, prior to Cross filling
11 both positions. Her job was to work closely with research physicians and study staff, to perform
12 compliant research billing audits. During the early years, she made good progress reducing
13 compliance risk and implementing compliant procedures and policies, for clinical research.

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15 10. The Corporate Compliance Officer (Phuong Dao), reviewed and approved audit plans,
16 results and audit reports, prepared by Cross, from 10/2007- 10/2010, until the new Compliance
17 Manager, was hired, on 7/1/2010, and was trained and prepared to review the audit reviews.
18 On or about October 31, 2012, Dao left SCCA. Thereafter, it was Cross' job to report all audit
19 findings to the Compliance Manager. Problems sometimes occur in research billing audits,
20 because of missing, inaccurate required Institutional Review Board (IRB) approved study
21 budgets for grant, or government funded clinical research studies, billing plans/contracts, and
22 signed patient Informed Consent Forms. Problems with Epic software/claim format, set-up
23 problems preventing study participants (patients or insurance) from being billed and charged
24 for services, contracted and billable to the study sponsor, to be paid by the study budget/grant.
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26 When such problems arose, Cross would consult with the Compliance Manger, throughout the

1 audit process, and she would prepare and distribute a final audit report, to the physician and
2 the study staff. Cross provided the study staff with details of billing errors and
3 recommendations on reconciliations. Also, recommendations were provided on documentation
4 and compliance requirements, for study budgets/ plans and study set up information.

5 11. In addition, it was Cross' job to work closely with patient financial services, to ensure
6 proper claims reversals and credits were applied to patient accounts/insurance. She provided
7 study staff with detailed reports of audit findings and recommendations for corrective actions.
8 Cross would conduct a follow up audit, to ensure audit findings were addressed and corrected.

9 12. Between October 2007 and October 2013, Cross investigated and produced more than
10 50 audits. Ms. Pranzini reviewed, accepted, approved, and signed (approx.) six research billing
11 audit reports, between October 2010 and October 2013, prepared by Cross. In February 2013,
12 Compliance Manager, Traci Pranzini, became SCCA's Corporate Compliance Officer.

13 13. Between April 2012 and December 2012, Cross worked closely with Dr. John Pagel of
14 FRED HUTCH and other staff members, on a research study entitled "Trubion 016; Protocol
15 #FH-2441." The sponsor for the study was Emergent. This was one of many studies that
16 patients were assigned.

17 14. In April 2012, Cross began investigating a patient initiated inquiry about charges billed
18 to the patient's account and/or insurance and that were submitted to Medicare. The patient
19 inquired about copays & deductibles that he was being charged, for services that were provided
20 as a part his/her study. Research Coordinator Lori Jarrett, contacted Revenue Cycle Billing,
21 Patient Finance Supervisor, and Kris Pedersen about the patient's billing concerns.

22 15. On April 18, 2012, Kris Pedersen contacted, Compliance Manager, Traci Pranzini to
23 request an audit on patient's study account. Ms. Pranzini forwarded the inquiry to Ms. Cross
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1 for initial review of the patient's account and research billable charges.

2 16. On April 20, 2012, Ms. Cross e-mailed Compliance Manager, Pranzini with an initial
3 review of the research billable charges, posted to the patient's account. Cross uncovered so
4 many documentation errors that needed to be addressed and/or clarified, before she could
5 research the actual billing discrepancies. At this time, Ms. Cross was very concerned that
6 fraudulent conduct may have occurred. (The actual audit did not close until 12/8/2012).

7 17. During her investigation, Ms. Cross uncovered the following. First, the patient was
8 being treated and billed for **study protocol #FH2441**. However, the patient had not signed
9 consent to participate in this study. On January 12, 2012, the patient signed consent to
10 participate in study #FH 2431; (not #2441) Dr. Pagel's documentation does not indicate the
11 patient is on the study # that he consented to participate in. On 1/13/12, the patient was charged
12 for a (protocol #2441 research billable) Bone Marrow Procedure. The patient was charged for
13 this procedure only because his documentation did not indicate the correct study budget
14 information. Therefore, the patient was charged for the procedures, as well as the study
15 sponsor, in the budget, who paid for the procedures. Furthermore, the patient was also billed
16 for CT Scans that should had been billable and paid by the study budget.

17 18. Again, after uncovering these facts, Ms. Cross formed the belief that medical fraud may
18 have occurred and/or was on going. In fact, due to the severity of her findings, Cross was
19 instructed by Pranzini to review the study accounts of the other four participant on Dr. Pagel's
20 study. Cross uncovered serious discrepancies on all patients being "treated" in study (# 2441).
21 Two of the five participants did not have signed consents, in their paper chart medical record,
22 acknowledging participation in Dr. Pagel's study.

23 19. A second patient's account, reviewed by Ms. Cross, revealed that the patient did not
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1 sign a consent form to participate in ANY study, including Protocol #2441. However,
2 according to Dr. Pagel's clinic notes, the patient was participating in #2441. In fact, Dr. Pagel
3 references three separate studies in the patient's legal medical record as being treated on these
4 three studies, with an additional reference to a fourth study. Based on her investigation, Ms.
5 Cross identified Research Billing fraud, Medicare fraud, Human Protection fraud,
6 Documentation fraud, and Double Billing fraud.

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8 20. Ms. Cross immediately provided all of this information to Pranzini and she informed
9 her that she was concerned that Medicare fraud had occurred. Moreover, Dr. Pagel confirmed
10 Ms. Cross' reasonable belief that SCCA may have been systematically committing fraud, when
11 she was told by Dr. Pagel, on or about April 25th, 2012, that he was aware of the erroneous
12 research billing practices and non-compliant documentation. Surprisingly, the audit didn't
13 close until Dec. 2012.

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15 21. On May 14, 2012, Cross completed and submitted an audit report, to Pranzini, detailing
16 the information, noted above, in addition to four other study participants. FRED HUTCH,
17 Legal Counsel, Gerianne Sands, was brought into the investigation, to minimize the impact of
18 the non-compliant documentation implications for Dr. Pagel's study documentation and the
19 Medicare fraud concerns.

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21 22. From May 14, 2012 – July 27, 2012, Pranzini teamed with Revenue Cycle Compliance
22 Manger, Eve Peabody, to re-write Cross' original audit report, without Cross' input. Cross
23 became aware of the rewrite, when Peabody asked Ms. Cross questions about her original audit
24 report, that were out of Ms. Peabody's job scope. It was then that Ms. Cross believed that
25 Pranzini was attempting to cover up Medicare fraud, by rewriting Cross' original report, before
26 distribution.

1 23. Thus, Pranzini distributed a “revised” audit report to study #2441 Trubion 016 to the
2 stakeholders, on July 24, 2012. She did not include Compliance Officer Phuong Dao in the
3 “revised” audit report, nor did she make any reference to the work Ms. Cross had investigated
4 for the “original” audit.

5 24. On July, 31, 2012, Dr. Pagel called Ms. Cross, in a fit of rage, regarding the audit report
6 that Pranzini sent out. He called back with Kathleen Shannon-Dorcy on the phone. Dr. Pagel
7 stated that the audit department had no authority to suggest that there were errors associated
8 with his study and that, in thirteen years, no had ever looked at his documentation. Nonetheless,
9 Dr. Pagel acknowledged that the audit findings indicated that the Defendants needed to
10 reimburse patients and the government; however, Ms. Cross reasonably believed that, with this
11 knowledge, Defendant chose not to fully reimburse those who had been overcharged and
12 instead kept the money, despite the fact that this Audit began in April of 2012 and Cross was
13 terminated in October of 2013.

14 25. On or about September 2, 2012 Pranzini and Cross finally met to discuss the next steps,
15 regarding the audit. However, Pranzini appeared unconcerned with Ms. Cross’ original
16 findings and deemed the audit closed. This did not sit well with Ms. Cross.

17 26. Finally, after several attempts, on December 8, 2012, Ms. Cross met with CEO, Norm
18 Hubbard, to discuss the findings associated with Dr. Pagel’s audit and to discuss her concerns
19 that SCCA knew fraudulent charges were made to the government. Cross directly
20 communicated to Norm Hubbard that SSCA had committed Medicare fraud and that, because
21 of Dr. Pagel’s fraudulent study protocols, all study participants may have been double billed
22 and/or billed fraudulently.

23 27. Also, she informed Mr. Hubbard that she was concerned that the seriousness of Dr.
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1 Pagel's fraudulent documentation was being overlooked and not reported to the proper clinical
2 research sponsors or government agencies (OIG, IRB). Cross discussed the discrepancies in
3 the documentation, concerning treatment, study protocol information in the legal medical
4 records and multiple research related procedures, billed to the patient and billed and paid by
5 the study budget sponsor that were never properly addressed, reported and/or reconciled.

6 28. Furthermore, Dr. Pagel wasn't offered or required to participate in any additional
7 documentation training, or consequences, for not adhering to the research billing and
8 documentation guidelines. Dr. Pagel was allowed to continue with the questionable research
9 results, in order to validate the government funding for the Trubion- 016 study. This was done
10 without signed informed consent forms, from "participating" study participants. This resulted
11 in double billing to the patients and the study budget agreement, and serious lack of
12 documentation, to support the results of the study.

13 29. After not receiving any follow up response from CEO Hubbard nor Ms. Pranzini,
14 Cross' concerns regarding Medical fraud intensified. She was convinced that SCCA and Dr.
15 Pagel conducted unsupported research studies, double billed patients for services and
16 procedures budgeted and paid by the study agreement, and that their conduct violated many of
17 the governments required research auditing, documentation and billing requirements.
18 Furthermore, Ms. Cross was concerned that unsupported research findings invalidated the
19 actual study findings, for FDA approval of the study drug; promoted the patient to maximum
20 allowable insurance benefits, co-pays, co-insurance, out of pocket cost and collections for
21 services and procedures, billable to the study.

22 30. Moreover, Cross' Medicare fraud concerns were confirmed, in the following months,
23 when she was removed or not included in her regular daily job functions. She was inexplicably
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1 required to directly report to Eve Peabody, instead of Pranzini. This was most peculiar because
2 Peabody had no research auditing training or experience. In addition, her work environment
3 and relationship with Ms. Pranzini began to turn. Ms. Cross believes that Ms. Pranzini was
4 retaliating against her for going above her head and talking to CEO Hubbard.

5 31. In January 2013, Ms. Cross had another conversation with CEO Hubbard. Rather than
6 explaining how Cross' identified concerns, regarding the audit, were corrected, Mr. Hubbard
7 asked Ms. Cross "if she stood behind her findings." Ms. Cross said "yes" and Mr. Hubbard
8 responded: "that's all I need to know." Shortly thereafter, Ms. Cross was required to
9 unofficially report to Eve Peabody, on all future audit findings. In June 2013, Ms. Cross was
10 officially instructed by Pranzini to start reporting only to Ms. Peabody and Ms. Cross was
11 excluded from all audit discussions.
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13 32. Pranzini and SCCA's retaliatory conduct ultimately required Ms. Cross to seek medical
14 treatment and to take time off from work. Only after several months off of work did Ms. Cross
15 medical providers clear her to return to work.
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17 33. Finally, on October 1, 2013, after Peabody had walked pass Cross' desk, for over 2
18 weeks, without acknowledging her, at all, Ms. Cross was asked to meet with her after work.
19 When Ms. Cross showed up for the meeting, Ms. Peabody was accompanied by Fred Hutch
20 Human Resources Representative Jon Flowers, whom Ms. Cross had conferred with, over the
21 past year, concerning the Pagel audit and the change in her work environment since the audit
22 findings had been reported.
23

24 34. At this meeting, Peabody informed Cross that "the decision had been made to terminate
25 her, effective immediately." When Cross asked for the reason, Peabody stated "Washington is
26 an at-will state, and she did not have to give her a reason." Simultaneously, HR Rep. Flowers,

1 slid a red folder across the table and advised Cross to read and sign the document, enclosed.

2 35. At the meeting, Mr. Flowers informed Ms. Cross, that because of “how valued she was to
3 the organization that all senior administrators had to sign off on her termination” and they
4 offered her approximately \$43,000.00 to resign. Ms. Cross was instructed that if she signed
5 the separation letter, then her unemployment would be granted. Mr. Cross did not sign the
6 document.

7 36. Ms. Cross believes that SCCA’s actions were in violation of their “Open door, no
8 retaliation” compliance policy. Ms. Cross, on information and belief, believes that her
9 investigation uncovered SCCA practices, that promoted non-compliance of research studies
10 and physician’s practices and that SCCA failed to educate or report documentation and/or
11 breeched it study sponsor’s grants/budgets and/or agreements, per OIG, IRB and government
12 requirements. Ms. Cross believes that this is a practice that began many years ago and has
13 affected the outcome of several documented audits. If so, then Medicare has been falsely up
14 charged for many years. A fact that an internal investigation by SCCA would have revealed,
15 moreover, on information and belief,
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17 37. Thus, on October 1, 2013, as a direct result of Cross’ investigation, she was terminated,
18 after 26yrs of loyal, dedicated service, and the implementation of two departments, (Pharmacy
19 and Compliance), at SCCA. Cross documented and reported all of the findings of the audit
20 investigation, according to compliance guidelines and the way former Compliance Officer Dao
21 had trained and instructed her to, prior to his departure and before Pranzini was employed at
22 SCCA and promoted from Compliance Manager to Compliance Officer. Accordingly, Cross
23 believes she was fired for exposing Medicare fraud and non-compliance results, of the clinical
24 research study, conducted by Dr. Pagel.
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1 38. Cross believes she was fired without explanation, and denied any access to the results
2 of the audit investigation, in order to wall her off from hard information about the nature and
3 extent of the false billing and to keep her silent. At the time of her termination, SCCA tried to
4 buy her silence. She was presented with a draft settlement agreement, which provided that, in
5 return for SCCA paying her \$43,000.00, Cross would give SCCA a full release of all claims;
6 promise to keep confidential any information she had about SCCA (including its billing
7 practices, policies, and procedures). In addition, SCCA would agree to not oppose
8 unemployment compensation, even though the settlement called for her to “mutually separate.”
9 In short, Ms. Cross believes the proposed Settlement Agreement was an attempt to silence her,
10 regarding her knowledge of SCCA’s Medicare fraud and she believes the offer was an
11 admission that they had something very serious to hide.
12

13 **THE ACTIONABLE CONDUCT OF THE DEFENDANTS**

14 39. For a period of more than thirteen years, prior to April, 2012, Defendant acted
15 knowingly, or in reckless disregard or in deliberate ignorance of the truth, in presenting or
16 causing to be presented to the United States false claims, for payment of Medicare
17 reimbursements, referenced above, for payment or approval, in violation of 31 U.S.C. 3729, et
18 seq., the False Claims Act.
19

20 40. When Ms. Cross’ investigation exposed SCCA’s fraudulent conduct and procedures
21 and she refused to capitulate, SCCA, with explicit notice of Cross investigative efforts,
22 retaliated against her, by systematically excluding her from performing her job duties and
23 eventually terminating her employment.
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25 **CAUSES OF ACTION: COUNT I RETALIATION**

26 41. Plaintiff alleges and incorporates by reference paragraphs 1 through 39, above, as

1 though set forth fully herein.

2 42. Through investigation and fact gathering, Cross formed a good faith belief that SCCA
3 and FRED HUTCH may have been committing Medicare fraud and she reported this
4 information to her supervisors. Cross' belief was a belief that an employee in the same or
5 similar circumstance would have held. In retaliation for her investigative conduct and for
6 refusing to dismiss her findings, the Defendants systematically removed Ms. Cross from her
7 audit and shielded her from fraudulent clinical study procedures and policies, which allowed
8 for up charging claims, for Medicare reimbursement, in such a way that it would defraud the
9 United States.
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11 43. By this conduct, the Defendants retaliated against Cross and wrongfully terminated her,
12 in violation of their own policies, Washington and Federal law, and the anti-retaliation
13 provisions of the False Claims Act, 31 U.S.C. 3730(h). As a result of Defendants' conduct,
14 Plaintiff has been damaged, in an amount to be proven, at the time of trial.
15

16 **COUNT II WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

17 44. Plaintiff alleges and incorporates by reference paragraphs 1 through 43, above, as
18 though set forth fully herein.

19 45. By this conduct, the Defendants retaliated against Cross and wrongfully terminated her,
20 in violation of the public policies, mandated in both Washington and Federal laws, to protect
21 whistleblowers. As a result of Defendants' conduct, Plaintiff has been damaged, in amount to
22 be proven, at the time of trial.
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24 **COUNT III UNPAID WAGES AND WILLFULLY WITHHELD WAGES** 25 **(RCW CHAPTERS 49.48 AND 49.52)**

26 46. Plaintiff incorporates all prior allegations made in this Complaint. By wrongfully

1 terminating Cross, Defendant SCCA willfully and with intent withheld wages from Plaintiff,
2 which it was obligated to pay. Defendant violated Washington's wage and hour laws, RCW
3 Chapters 49.48 and 49.52. Pursuant to 49.52.70, Defendant owes Plaintiff double damages
4 and Defendant is responsible for attorney fees and costs.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands that judgment be entered in favor of the Plaintiff and
7 against the Defendants as follows:

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9 47. Plaintiff demands damages in an amount to be proven at the time of trial, including
10 reinstatement, with the same seniority status that Cross would have had, but for the retaliation
11 (or front pay in the alternative), two times the amount of back pay, interest on the back pay,
12 and compensation for any special damages sustained, as a result of the retaliation, including
13 litigation costs and reasonable attorneys' fees, plus pre-judgment interest, at the highest rate,
14 allowed by law. Further, the Plaintiff demands such other and further relief, as the Court deems
15 just and equitable.
16

17 **DEMAND FOR JURY TRIAL**

18 48. Pursuant to Rule 38, of the Federal Rules of Civil Procedure, the Plaintiff demands trial
19 by jury, in this action, of all issues so triable.

20 RESPECTFULLY SUBMITTED this 27th day of May, 2016.

21 **FULTON LAW PLLC**

22
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